

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 8607

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Downs Rachlin Martin PLLC

Petition of New Cingular Wireless PCS, LLC )  
d/b/a AT&T Mobility, and Blue Sky Towers, )  
LLC, for a certificate of public good, pursuant to )  
30 V.S.A. § 248a, for the installation of )  
telecommunications equipment in Brattleboro, )  
Vermont )

Order entered:

10/30/2015

**I. INTRODUCTION**

In this Order, the Vermont Public Service Board ("Board") approves the application filed by New Cingular Wireless PCS, LLC d/b/a AT&T Mobility, and Blue Sky Towers, LLC (the "Petitioners"), pursuant to 30 V.S.A. § 248a and the Board's Procedures Order ("Procedures Order"),<sup>1</sup> and grants the Petitioners a certificate of public good ("CPG") authorizing the installation of a wireless telecommunications facility in Brattleboro, Vermont (the "Project").

**II. BACKGROUND**

On August 14, 2015, the Petitioner filed a petition and prefiled testimony requesting that the Board issue a CPG.

On September 1, 2015, the Town of Brattleboro ("Town") filed a letter stating opposition to the Project on aesthetic grounds and requesting that the Project be moved to an unspecified alternate location or that the height of the Project tower be reduced. The Town has not sought intervention or requested a hearing in this proceeding.

On September 3, 2015, the Vermont Department of Public Service ("Department") filed a letter with the Board stating that the Project does not raise a significant issue with respect to the applicable criteria of § 248a. However, the Department recommended that the Board withhold

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1. *Second amended order implementing standards and procedures for issuance of a certificate of public good for communications facilities pursuant to 30 V.S.A. § 248a*, Order issued September 5, 2014.

issuing an order on the petition until the Department could respond to comments from the Town or the Petitioners.

On September 16, 2015, the Petitioners filed supplemental testimony regarding modifications to the Project in response to the September 1 comments from the Town.

On October 13, 2015, the Department filed a response to the September 1 comments from the Town.

On October 13, 2015, the Petitioners filed additional supplemental testimony in response to the September 1 comments from the Town.

No other comments regarding the Project were filed with the Board.

The Board has determined that the petition and prefiled testimony have effectively addressed the substantive criteria of 30 V.S.A. § 248a. Consequently, we find that the procedure authorized by § 248a is sufficient to satisfy the public interest, and no hearings are required.

### **III. FINDINGS**

1. The Project involves the installation of a telecommunications facility at 1227 Putney Road in Brattleboro, Vermont. The objective of the Project is to expand and improve wireless telecommunications coverage in the surrounding area. Exh. 6B-1.

2. The Project involves the installation of a new monopole tower that will be 120' tall and will support 12 antennas, each measuring approximately 92" by 15", mounted at a centerline height of 136'. The tower and the antennas will be painted a dark brown color. The Project will also include an approximately 11' by 20' equipment shelter, a backup generator, overhead utility lines, and ancillary equipment. The equipment will be located within an approximately 40' by 80' gravel compound surrounded by a 6' high chain-link fence. Access to the compound will be provided through a 20' wide easement over an existing access drive and parking area on the property. Exhs. 6.1, 6B-1, and 6B-2.

3. The Project will involve approximately 4,400 square feet of permanent earth disturbance. Exh. 6B-1.

4. The Project will not have an undue adverse impact on floodways, the scenic or natural beauty of the area, aesthetics, historic sites, or rare and irreplaceable natural areas. This finding is supported by findings 5 through 8, below.

5. The Project will be located in a commercial and industrial area of Brattleboro. The Project will be relatively small at 120' in height and will be painted dark brown to further mitigate its visual impact on the surrounding area. The Project will not appear shocking or offensive to the average viewer. The Project does not violate any written community standards intended to regulate aesthetic effects in the area. Accordingly, the Project will not have an undue adverse effect on aesthetics. Exhs. 6.1, 6B-1, and 6B-3.

6. The Project will have no adverse impact on rare or irreplaceable natural areas, wildlife habitat, or endangered species. Exhs. 6B-1 and 6B-8.

7. The Project will not have an adverse effect on historic sites. Exhs. 6B-1 and 6B-11.

8. The Project will have no adverse effect on floodplains as the Project is not located in a floodplain. Exhs. 6B-1 and 6B-2.

9. There are no existing land use or zoning permits that apply to the Project. Exh. 6B-1.

10. The Project is consistent with the land conservation measures in the Brattleboro Town Plan and the Windham Regional Plan. Exh. 6B-1.

11. The Windham Regional Planning Commission filed a letter with the Petitioners expressing support for the Project. Exh. 6B-18.

#### **IV. DISCUSSION AND CONCLUSION**

The procedures governing Board approval of telecommunications facilities are set forth in 30 V.S.A. § 248a. Section 248a(1) provides that the Board:

may issue rules or orders implementing and interpreting this section. In developing such rules or orders, the board shall seek to simplify the application and review process as appropriate . . . .

In order to implement the statute, the Board adopted the Procedures Order. In accordance with § 248a(b)(3), the Procedures Order, at Section II, defines a project of "limited size and scope" as:

a new telecommunications facility, including ancillary improvements, that does not exceed 140 feet in height; or an addition, modification, replacement, or removal of equipment at an existing telecommunications facility or support structure, and ancillary improvements, that would result in a total facility height of less than 200 feet and does not increase the width of the existing support structure by more than 20 feet. In order to qualify as a project of limited size and scope, construction of the project shall not result in earth disturbance of more than 10,000 square feet of earth, excluding temporary earth disturbance associated with construction activities.

As required by § 248a (c)(1), and set forth in Section IV(H) of the Procedures Order, in reviewing projects of limited size and scope the Board conditionally waives:

all criteria under 30 V.S.A. § 248a (c)(1), with the exception of 10 V.S.A. §§ 6086(a)(1)(D) (floodways) and 6086(a)(8) (aesthetics, historic sites, rare and irreplaceable natural areas, endangered species, necessary wildlife).

The Project will be 120' in height and will result in additional permanent earth disturbance of approximately 4,400 square feet. Therefore, the Project qualifies as a project of limited size and scope.

The Town's comments

The Town argues "that the top of the tower, including the multiplicity of antennas and devices to be located on the installation, will be visible and appear substantially out of context from several locations in Brattleboro that have identified scenic value, including the Connecticut River itself, if the Tower rises to a height of 120 or 140 feet."<sup>2</sup> In support of its position, the Town cites to Section 9.2 of the Town Plan, which states:

Review development projects to ensure minimal negative impact on historic and/or scenic resources.

However, the Town maintains that "little negative impact . . . would result from a 100-foot tower."<sup>3</sup> Therefore, the Town recommends that the Project tower height be lowered to 100' or the Project be moved to an unspecified alternate location.

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2. Town's Comments at 1.

3. *Id.* at 2.

In response to the concerns expressed by the Town, the Petitioners have agreed to lower the Project tower height to 120' from the originally proposed 140', and will paint the tower and antennas a dark brown color to further reduce visibility.<sup>4</sup> The Petitioners contend that lowering the tower height to 100', as requested by the Town, would frustrate the coverage goal of the Project to provide reliable service along I-91 south of Exit 2 in Brattleboro. The Petitioners also maintain that no collocation opportunities exist that would allow them to fulfill their coverage objectives in the area.

The Department argues that the "provision of consistent mobile wireless coverage from multiple carriers on travel corridors, especially on Interstates 89 and 91, is a significant State interest." Therefore, the Department maintains that there is "good cause" to not give substantial deference to the Town's recommendations and recommends that the Board approve the petition.

Pursuant to § 248a(c)(2), the Board shall find that "[u]nless there is good cause to find otherwise, substantial deference has been given to the land conservation measures in the plans of the affected municipalities and recommendations of the municipal legislative bodies and the municipal and regional planning commissions regarding the municipal and regional plans, respectively." The Procedures Order defines "good cause" as "a showing that deference to . . . the recommendations of the municipal legislative bodies and municipal and regional planning commissions regarding the municipal and regional plans, respectively, would be detrimental to the public good or the State's interest articulated in 30 V.S.A. § 202c." Pursuant to § 202c(3) the State's interests include supporting "the availability of modern mobile wireless telecommunications services along the State's travel corridors and in the State's communities."

In this case, the Town has recommended a shorter tower height or relocation of the Project as a means of reducing the visual impact of the Project from nearby scenic areas. In response to the Town's concerns regarding visibility, the Petitioners have attempted to mitigate the visual impact of the Project by lowering the tower height and painting the tower and antennas. The evidence put forth by the Petitioners in this case demonstrates that further lowering of the tower or relocation of the Project would frustrate the coverage goals of the Project to provide service along Interstate 91 and in portions of Brattleboro. In addition, as noted

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4. Petitioners' September 16 Supplemental Testimony at 11.

in the findings above, we conclude that while the Project will be visible from some surrounding areas, it will not have an undue adverse effect on the aesthetics of the area. Therefore, we conclude that good cause exists to not defer to the Town's recommendations. Additionally, the Town has not explained how the Project runs afoul of the section of the Town Plan cited in support of its position. That section requires review of projects to minimize impacts on historic and scenic resources. In response to the Town's concerns, the Petitioners reduced the height of the Project tower by 20' and agreed to paint the tower and antennas a dark brown color in order to reduce the visibility of the Project. The Petitioners have responded to the Town's concerns in positive fashion and have minimized the Project's aesthetic impacts to the extent feasible while still maintaining the Project's coverage goals. We also note that our approval of the Project is consistent with the recommendations of the Windham Regional Planning Commission.

Based upon all of the above evidence, we conclude that the petition does not raise a significant issue with respect to the relevant substantive criteria of 30 V.S.A. § 248a, the public interest is satisfied by the procedures authorized in 30 V.S.A. § 248a, and the proposed Project will promote the general good of the State.

#### V. ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED by the Public Service Board of the State of Vermont that the installation and operation of a telecommunications facility at the location specified in the above findings, by New Cingular Wireless PCS, LLC, d/b/a AT&T Mobility, and Blue Sky Towers, LLC, in accordance with the evidence and plans submitted in this proceeding, will promote the general good of the State of Vermont in accordance with 30 V.S.A. § 248a(a), and a certificate of public good to that effect shall be issued in this matter.

Dated at Montpelier, Vermont, this 30<sup>th</sup> day of October, 2015.

s/James Volz )

) PUBLIC SERVICE

s/Margaret Cheney )

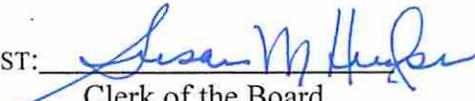
) BOARD

s/Sarah Hofmann )

) OF VERMONT

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FILED: October 30, 2015

ATTEST:   
Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@vermont.gov)*

*Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and Order.*

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 8607

Petition of New Cingular Wireless PCS, LLC d/b/a )  
AT&T Mobility, and Blue Sky Towers, LLC, for a )  
certificate of public good, pursuant to 30 V.S.A. )  
§ 248a, for the installation of telecommunications )  
equipment in Brattleboro, Vermont )

Entered: 10/30/2015

**CERTIFICATE OF PUBLIC GOOD ISSUED**  
**PURSUANT TO 30 V.S.A. SECTION 248a**

IT IS HEREBY CERTIFIED that the Public Service Board ("Board") of the State of Vermont ("Board") this day found and adjudged that the wireless telecommunications facility proposed by New Cingular Wireless PCS, LLC, d/b/a AT&T Mobility, and Blue Sky Towers, LLC, at 1227 Putney Road in Brattleboro, Vermont (the "Project"), will promote the general good of the State, subject to the following conditions:

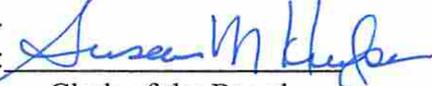
1. Operation, construction, and maintenance of the Project shall be in accordance with the plans and evidence submitted in this proceeding. Any material deviation or substantial change in the Project is prohibited without prior Board approval. Failure to obtain advance approval from the Board for a material deviation or substantial change from the approved plans may result in the assessment of a penalty pursuant to 30 V.S.A. §§ 30 and 247.
2. The Project shall comply with applicable existing and future statutory requirements and Board Rules and Orders.
3. This Certificate of Public Good shall not be transferred without prior approval of the Board.

Dated at Montpelier, Vermont, this 30<sup>th</sup> day of October, 2015.

s/James Volz )  
 )  
 ) PUBLIC SERVICE  
s/Margaret Cheney )  
 ) BOARD  
 )  
 ) OF VERMONT  
s/Sarah Hofmann )

A TRUE COPY  
OFFICE OF THE CLERK

FILED: October 30, 2015

ATTEST:   
Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@vermont.gov)*